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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,074	02/13/2006	Roelof Adriaan Buitendag	P20937DD	7450

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EXAMINER

HAYES, KRISTEN C

ART UNIT	PAPER NUMBER
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3643

MAIL DATE	DELIVERY MODE
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07/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/568,074	BUITENDAG ET AL.	
	Examiner	Art Unit	
	Kristen C. Hayes	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060213</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in South Africa on 08/14/2003. It is noted, however, that applicant has not filed a certified copy of application ZA 2003/6253 as required by 35 U.S.C. 119(b).

Information Disclosure Statement

2. The information disclosure statement filed 02/13/2006 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because an English translation of the foreign documents has not been provided; US 2003106262 is an invalid publication number. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 36-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 36 claims "a second lower end" in line 7. A first lower end is not claimed.

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6. Claim 39 recites the limitation of the inner wall extending between the outer wall and the base. From the drawings it appears the inner wall is next to the outer wall and perpendicular to the base, not extending between them.

7. Claim 45 recites the limitation of the overflow formation extending through the body. From the drawings it appears that the overflow formation extends through the support and from the body base.

8. Claim 47 recites the limitation of the overflow formation including a spillway on the outer wall. From the instant specification [¶0033], the spillway 57 seems to be on or near the support, not the outer wall.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 36, 37, 39-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Hitchcock US 1,221,449.

11. Regarding claims 36, 37, 54 and 55, Hitchcock discloses a plant container (Hitchcock, page 2: lines 30-35) an irrigation unit which includes a body which has an upper side, a lower side, a base on the lower side, an outer wall (11) which extends upwardly from the base and an inner wall (formed by receptacle 10) which is engaged with and spaced from the outer wall, a cavity formed by the body (Hitchcock, Figure 1), a reservoir defined between the inner and outer walls which has an inlet thereto (24) and an outlet therefrom into the cavity, an open ended fluid passage (24) which has an upper end which terminates in the reservoir (Hitchcock, Figure 1)

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and a second lower end which terminates in the cavity, an overflow formation (13, 23) which extends from the body and which is in communication with the cavity (through element 23) and a support formation in the cavity which has a platform (17) and a plurality of spacers (16) engaged with the platform with which the platform is spaced from the base, wherein the overflow formation extends through the platform and a plant is planted in the plant container (Hitchcock, page 2: lines 30-35).

12. Regarding claim 39, Hitchcock further discloses (as best understood) the inner wall extending between the outer wall and the base (Hitchcock, Figure 1).

13. Regarding claim 40, Hitchcock further discloses the cavity being open ended towards the upper side (Hitchcock, Figure 1).

14. Regarding claim 41, Hitchcock further discloses the inlet including a plug opening in the body (shown with plug 27).

15. Regarding claim 42, Hitchcock further discloses the inlet including an elongate liquid conduit (24) which extends from an upper entrance to a lower exit into the reservoir.

16. Regarding claim 43, Hitchcock further discloses the outlet includes a valve means (Hitchcock, page 2: lines 5-19, lines 66-69).

17. Regarding claim 44, Hitchcock further discloses the overflow formation being engaged with the base (through element 23).

18. Regarding claim 45, Hitchcock further discloses the overflow formation being an upstanding, open ended, tubular member which extends through the body (as best understood) and from the base into the cavity (Hitchcock, Figure 1).

19. Regarding claim 46, Hitchcock further discloses the overflow formation including an overflow entrance (at 12) which is spaced from the base and wherein the outlet and the lower end are located between the overflow entrance and the base (Hitchcock, Figure 1).

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20. Regarding claim 47, Hitchcock further discloses (as best understood) the overflow formation including a spillway on the outer wall (near 12).

21. Regarding claim 48, Hitchcock further discloses the support formation dividing the cavity into a lower section (shown within 11) and an upper section (shown within 10) wherein the outlet and the second lower end are in direct communication with the lower section and the overflow formation is in direct communication with the upper section (through element 23 and openings 12).

22. Regarding claim 49, Hitchcock further disclose the platform including a plurality of apertures and an enlarged hole therethrough (12, 24, 30).

23. Regarding claim 50, Hitchcock further discloses the support formation including a wall formation extending from the platform to define a receptacle (10).

24. Regarding claim 51, Hitchcock further discloses the support formation being removably insertable into the cavity (Hitchcock, Figures 2, 5).

25. Regarding claim 52, Hitchcock further discloses a draining formation in the outer wall which is in communication with the reservoir (Hitchcock, page 2: lines 5-19).

26. Regarding claim 53, Hitchcock further discloses a liquid level indicator (29, 32, 34).

Claim Rejections - 35 USC § 103

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hitchcock US 1,221,449.

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29. Regarding claim 38, Hitchcock discloses the limitations of claim 37 but does not disclose the plant container being integrally formed with the body. However, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 US 164 (1893). It would have been obvious to one of ordinary skill in the art at the time of the invention to make the device of Hitchcock integral so that assembly was not required and no pieces could be lost.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Hayes whose telephone number is 571-270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH
8 July 2008

Peter Poon
Examiner
Art Unit 3643

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/Peter M. Poon/
Supervisory Patent Examiner, Art Unit 3643